IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

WP(C).No. 34035 of 2006(B)

AGAINST THE ORDER IN EP 12/06 IN
ARC.224/2002 of MUNSIFF COURT, ALATHUR

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PETITIONER:

RAMAKRISHNAN S/O. PAZHANIMALA AGED 48 YEARS,
IDEAPARAMBIL HOUSE, CHIRAYIL, MANJAPRA P.O.,
ALATHUR TALUK IN PALAKKAD DISTRICT.

BY ADV. SRI.JOHN JOSEPH(ROY)

RESPONDENTS:

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1. ALATHUR RURAL CO-OPERATIVE HOUSING SOCIETY LTD.F-1627, ALATHUR P.O., PALAKKADU DISTRICT REPRESENTED BY SECRETARY.
2. GIJO S/O. K.T.PALU, KUTTIKADAN VEETTIL,
SWATHY NAGAR, KATTUSSERY AMSOM, ALATHUR TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.34035 OF 2006

DATED THIS THE 20th DAY OF DECEMBER, 2006

JUDGMENT

Petitioner is the judgment debtor. First respondent is the decree holder. Petitioner is challenging the order of the executing Court for sale of the properties fixing upset price at Rs.3,00,000/-. Case of petitioner is that eventhough the value of properties sold is more than Rs.6,00,000/-, the upset price fixed by the Court was only Rs.3,00,000/- and therefore the settlement of proclamation is to be quashed.

2. Learned Counsel appearing for petitioner submitted that petitioner is prepared to pay the decree amount in instalments.

3. It is clear from the order of the executing Court dated, 1.9.06 that learned Munsiff has not complied with the mandatory provisions of Rule 66 of Order XXI of Code of Civil Procedure. Under second proviso to Sub rule 2 of Rule 66 of Order XXI of the Code, it is not the function of the executing Court to determine the value of the attached property, sought to be sold. But second proviso mandates that executing Court shall direct the value claimed by judgment debtor also be shown in the sale proclamation. As that has not done, the executing Court is directed has to pass fresh orders.

The writ petition is allowed. The order settling the proclamation is quashed. Executing Court is directed to incorporate the value claimed by petitioner/judgment debtor in the sale papers, before directing the sale. Petitioner is also at liberty to apply before the executing Court for permission to seek payment of the decree debt in instalments. If such application is filed, executing Court is to pass appropriate order after hearing the decree holder.

M.SASIDHARAN NAMBIAR,JUDGE

Acd